

ORIGINAL

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2013 MAR 28 AM 10:18

BEFORE THE  
UNITED STATES JUDICIAL PANEL ON DEPUTY CLERK J. Allen  
MULTIDISTRICT LITIGATION

IN RE: ANHEUSER-BUSCH BEER  
LABELING LITIGATION

MDL NO. \_\_\_\_\_

**NOTICE OF MOTION OF PLAINTIFFS NINA GIAMPAOLI & JOHN ELBERT FOR  
TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF CALIFORNIA  
PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED  
PRETRIAL PROCEEDINGS**

Robert W. Mills  
Joshua D. Boxer  
Corey B. Bennett  
**THE MILLS LAW FIRM**  
880 Las Gallinas Avenue, Suite 2  
San Rafael, California 94903  
Telephone: (415) 455-1326  
Email: Josh@millslawfirm.com

-and-

Robert M. Bramson  
**BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER**  
2125 Oak Grove Rd., Suite 120  
Walnut Creek, CA 94598  
Telephone: (925) 945-0200  
Email: Rbramson@bramsonplutzik.com

*Attorneys for Plaintiffs Nina Giampaoli, John Elbert, and  
the Proposed Classes*

Pursuant to 28 U.S.C. § 1407, Plaintiffs Nina Giampaoli and John Elbert ("Moving Plaintiffs") respectfully move this Panel for an order consolidating each of the class actions identified in the accompanying Schedule of Actions,<sup>1</sup> and further request that the Panel transfer the actions to the Northern District of California, the most appropriate and convenient venue for the parties and their witnesses. In support of their motion, and as more fully set forth in the accompanying memorandum, Moving Plaintiffs allege as follows:

1. Six pending class actions allege virtually identical legal claims and virtually identical facts against the same defendant, Anheuser-Busch Companies, LLC ("AB").

2. These actions for which transfer is requested allege that AB deliberately, uniformly and systematically overstates the alcohol content of its malt beverages, despite the sophisticated technology that enables AB to precisely identify and control the alcohol content of its products to within hundredths of one percent. Appendix, A, N.D. California Complaint ¶¶1, 9. 28 U.S.C. § 1407 applies because all of these actions are premised on virtually identical conduct and allegations, present common questions of fact and law, and make the *same* core allegations against the *same, single* defendant.<sup>2</sup>

3. The actions for which transfer is requested are all class actions, one of which, the California action, seeks to represent all consumers in the contiguous 48 states who purchased at retail for personal, family or household purposes, and not for re-sale, during the fullest period permitted by the applicable statute of limitations, one or more of 11 identified AB products, which were manufactured in the state of Missouri for off-site consumption. The other class actions seek

<sup>1</sup> The Schedule of Actions is found on the last page of Moving Plaintiffs' Motion.

<sup>2</sup> Each of the actions allege violations of various state and local consumer protection statutes, while some include related claims based on the breach of implied warranty of merchantability and violation of the Moss-Magnusson Warranty Act. See Appendix, Tabs A-F.

1 to represent all such consumers of their respective states who purchased the identified AB  
2 products in their state.<sup>3</sup>

3 4. Moving Plaintiffs request transfer and consolidation “for the convenience of the  
4 parties and witness and [to] promote the just and efficient conduct” of these actions. 28 U.S.C. §  
5 1407(a). Specifically, consolidation will prevent duplicative discovery of the complex and highly  
6 technical issues involved, and eliminate the possibility of inconsistent rulings, particularly as they  
7 relate to the overlapping classes. Consolidation will reduce litigation costs, minimize  
8 inconvenience to parties and witnesses, and otherwise allow the actions to proceed efficiently to  
9 trial. Further, consolidation will facilitate a comprehensive schedule for appointing lead counsel  
10 and plaintiffs, the filing of a single pleading on behalf all plaintiffs in the actions, and testing of  
11 the pleading’s sufficiency. Consolidation will also provide a single forum to which future “tag-  
12 along” actions may be transferred to promote judicial economy.

13 Moving Plaintiffs respectfully request that the Panel enter an order transferring these  
14 actions, as well as future “tag-along” actions to the Northern District of California for  
15 consolidation of pretrial proceedings. This Motion is based on this Notice of Motion and Motion,  
16 the attached Memorandum of Law, the attached Appendix and exhibits thereto, the pleadings and  
17 papers on file herein, and upon such matters as may be presented to the Court at the time of the  
18 hearing.

19 The undersigned requests oral argument in the event that timely opposition papers are  
20 filed.

21 Dated: March 22, 2013

Respectfully submitted,  
**THE MILLS LAW FIRM**

22 By: /s/ Joshua D. Boxer  
23 Robert W. Mills (SBN 062154)  
24 Joshua D. Boxer (SBN 226712)

25 <sup>3</sup> The California action also seeks certification of a California subclass, composed of only  
26 California consumers.

1 Corey B. Bennett (SBN 267816)  
2 880 Las Gallinas Avenue, Suite 2  
3 San Rafael, California 94903  
4 Telephone: (415) 455-1326  
5 Email: Josh@millslawfirm.com

6 **BRAMSON, PLUTZIK, MAHLER &**  
7 **BIRKHAEUSER**

8 By: /s/ Robert M. Bramson  
9 Robert Bramson, Esq. (Bar No. 102006)  
10 2125 Oak Grove Rd., Suite 120  
11 Walnut Creek, CA 94598  
12 Telephone: (925) 945-0200  
13 Email: Rbramson@bramsonplutzik.com

14 *Attorneys for Plaintiffs Nina Giampaoli, John Elbert,*  
15 *and the Proposed Classes*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **BEFORE THE**  
3 **UNITED STATES JUDICIAL PANEL ON**  
4 **MULTIDISTRICT LITIGATION**

5  
6 **IN RE: ANHEUSER-BUSCH BEER**  
7 **LABELING LITIGATION**  
8

**MDL NO. \_\_\_\_\_**

9  
10 **BRIEF IN SUPPORT OF MOTION OF PLAINTIFFS NINA GIAMPAOLI & JOHN**  
11 **ELBERT FOR TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF**  
12 **CALIFORNIA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR**  
13 **CONSOLIDATED PRETRIAL PROCEEDINGS**

14 Robert W. Mills  
15 Joshua D. Boxer  
16 Corey B. Bennett  
17 **THE MILLS LAW FIRM**  
18 880 Las Gallinas Avenue, Suite 2  
19 San Rafael, California 94903  
20 Telephone: (415) 455-1326  
21 Email: Josh@millslawfirm.com

22 -and-

23 Robert M. Bramson  
24 **BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER**  
25 2125 Oak Grove Rd., Suite 120  
26 Walnut Creek, CA 94598  
27 Telephone: (925) 945-0200  
28 Email: Rbramson@bramsonplutzik.com

*Attorneys for Plaintiffs Nina Giampaoli, John Elbert, and  
the Proposed Classes*

## TABLE OF CONTENTS

I.	<b>INTRODUCTION</b> .....	1
II.	<b>SUMMARY OF FACTS</b> .....	2
	A. The Nature of the Litigation.....	2
	B. The Pending Cases.....	2
III.	<b>ARGUMENT</b> .....	3
	A. The Six Related Cases Involve Common Questions of Fact.....	4
	B. Consolidation Will Further the Convenience of the Parties and Witnesses.....	5
	C. Consolidation Will Promote Just and Efficient Conduct of These Actions.....	6
	D. The Northern District of California is the Most Appropriate Transferee District.....	8
IV.	<b>CONCLUSION</b> .....	9
	<b>SCHEDULE OF ACTIONS</b> .....	11

## TABLE OF AUTHORITIES

## Cases

<i>In re A.H Robins Co. "Dalkon Shield" IUD Prods. Dab. Litig.,</i> 406 F. Supp. 540, 542 (J.P.M.L. 1975) .....	- 7 -
<i>In re Cuisinart Food Processor Antitrust Litig.,</i> 506 F. Supp. 651 (J.P.M.L. 1981) .....	- 6 -
<i>In re Enron Corp. Sec., Derivative &amp; .....</i>	- 9 -
<i>In re Gen. Aircraft Corp. Antitrust/Tort Claims Act Litig.,</i> 449 F. Supp. 604 (J.P.M.L. 1978) .....	- 8 -
<i>In re Glaceau Vitaminwater Mktg. &amp; Sales Practices Litig.,</i> 764 F.Supp.2d 1349 (J.P.M.L.2011) .....	- 5 -
<i>In re Plumbing Fixture Cases,</i> 298 F.Supp. 484 (J.P.M.L. 1968) .....	- 8 -
<i>In re Republic Western Ins. Co. Ins. Coverage Litig.,</i> 206 F.Supp.2d 1364 (J.P.M.L.2002) .....	- 6 -
<i>In re Rio Hair Naturalizer Prods. Liab. Litig.,</i> 904 F. Supp. 1407 (J.P.M.L. 1995) .....	- 7 -
<i>In re Roadway Express, Inc. Employment Practices Litig.,</i> 384 F. Supp. 612 (J.P.M.L. 1974) .....	- 7 -
<i>In re Sterling Homex Corp. Sec. Litig.,</i> 405 F. Supp. 314 (J.P.M.L. 1975) .....	- 6 -
<i>In re Sugar Indus. Antitrust Litig.,</i> 395 F. Supp. 1271 (J.P.M.L. 1975) .....	- 7 -
<i>In re Uranium Indus. Antitrust Litig.,</i> 458 F. Supp. 1223 (J.P.M.L. 1978) .....	- 6 -
<i>Robinson v. DePuy Orthopaedics, Inc.,</i> 2012 WL 831650 (W.D. Va. Mar. 6, 2012) .....	- 5 -

## Statutes

15 U.S.C.A. § 2301 .....	- 4 -
28 U.S.C. § 1407 .....	passim
28 U.S.C. § 1407(a) .....	- 2 -, - 5 -, - 6 -
Cal. Bus. & Prof. Code § 17200 et seq. ....	- 4 -
Cal. Civ. Code § 1750 et seq. ....	- 4 -
Cal. Com. Code § 2314 .....	- 4 -
Mo. Ann. Stat. §§ 407.010 et seq. ....	- 4 -

1 **I. INTRODUCTION**

2 Pursuant to 28 U.S.C. § 1407, Plaintiffs Nina Giampaoli and John Elbert ("Moving  
3 Plaintiffs"), by and through their attorneys, hereby move this Court for an order consolidating the  
4 six class action lawsuits listed in the Schedule of Actions (collectively, the "Related Cases"),<sup>1</sup> all  
5 of which relate to the same subject matter, were initiated by the same types of consumers, make  
6 virtually identical legal claims, are based on virtually identical factual allegations, and were filed  
7 against the same defendant, Anheuser-Busch Companies, LLC. ("AB" or "Defendant"). In each  
8 case, the district courts will be asked to make factual and legal determinations arising out of a  
9 common course of conduct by AB. All six cases are in the early stages of litigation. No discovery  
10 has occurred and no initial disclosures have been made. No substantive rulings on motions to  
11 dismiss, motions for summary judgment, class certification or other pretrial matters have been  
12 heard in any of these cases.

13 Consolidation is appropriate under 28 U.S.C. § 1407(a) to conserve judicial resources by  
14 eliminating the need for repetitive rulings on similar legal and factual issues, prevent duplicative  
15 discovery into the company-wide policies and practices at issue in these cases, and eliminate the  
16 possibility of inconsistent rulings. Consolidation will reduce judicial time and litigation costs,  
17 minimize inconvenience to parties and witnesses, and otherwise allow the actions to proceed  
18 efficiently to trial. Further, consolidation will facilitate a comprehensive schedule for appointing  
19 lead counsel for plaintiffs, the filing of a single pleading on behalf all plaintiffs in the actions, and  
20 testing of the pleading's sufficiency. Consolidation will also provide a single forum to which  
21 anticipated "tag-along" actions may be transferred to promote judicial economy.

22 Moving Plaintiffs respectfully request that the actions be consolidated for pretrial  
23 proceedings in Northern District of California, the venue of the first-filed action, and the action  
24 affecting the rights of the largest number of putative class members.

25  
26 <sup>1</sup> The Schedule of Actions is found on the last page of this filing.



## II. SUMMARY OF FACTS

### A. The Nature of the Litigation

Plaintiffs in each of the related class actions allege that AB deliberately and uniformly misrepresents the alcohol content of its malt beverages, therefore giving consumers less value than they paid for. See Complaint, ¶1.<sup>2</sup> They allege that AB possesses sophisticated process control technology that enables it to precisely identify and control the exact alcohol content of malt beverages to within hundredths of one percent (i.e. .01%). Complaint ¶¶1, 9. Nonetheless, each of the plaintiffs alleges that, as a matter of corporate policy, AB adds extra water to its finished products to produce malt beverages that consistently have significantly lower alcohol content than the percentage displayed on its labels. *Id.* They allege that by stretching its products with water, AB is able to produce a significantly higher number of units of beer from the same starting batch of ingredients. *Id.* Plaintiffs further contend that there are no impediments – economic, practical or legal – to AB accurately labeling its products to reflect their true alcohol content. Nevertheless, AB uniformly misrepresents and overstates that content. *Id.*

### B. The Pending Cases

On February 22, 2013, Moving Plaintiffs filed their complaint in the Northern District of California. The additional actions were filed in the District of Colorado, the Eastern District of Pennsylvania, the District of New Jersey, the Northern District of Ohio, and the Northern District of Texas (Dallas Div.) between February 25 and February 28. In the Northern District of California, Moving Plaintiffs seek to represent the following classes:

“Nationwide Class”: All consumers residing in the 48 contiguous states who purchased at retail for personal, family or household purposes and not for re-sale, within five years before the date this suit was filed, one or more of the following Anheuser-Busch Companies, LLC products, which were manufactured in the state of Missouri for off-site

<sup>2</sup> See accompanying Appendix, Tabs A through F.

1 consumption: “Budweiser”; “Bud Ice”; “Bud Light Platinum”;  
 2 “Michelob”; “Michelob Ultra”; “Hurricane High Gravity Lager”; “King  
 3 Cobra”; “Busch Ice”; “Natural Ice”; “Black Crown” and “Bud Light  
 Lime.” *Id.* at ¶20.

4 “California Class”: All consumers who purchased at retail for personal,  
 5 family or household purposes and not for re-sale,, within four years  
 6 before the date this suit was filed, one or more of the following  
 7 Anheuser-Busch Companies, LLC products at retail in the state of  
 8 California for off-site consumption: “Budweiser”; “Bud Ice”; “Bud  
 Light Platinum”; “Michelob”; “Michelob Ultra”; “Hurricane High  
 Gravity Lager”; “King Cobra”; “Busch Ice”; “Natural Ice”; “Black  
 Crown” and “Bud Light Lime.” *Id.* at ¶21.

9 Moving Plaintiffs assert claims for violation of the Missouri Merchandising Practices Act,  
 10 Mo. Ann. Stat. §§ 407.010 *et seq.*; California’s Unfair Competition Law, Cal. Bus. & Prof. Code §  
 11 17200 *et seq.*; and the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*; breach of  
 12 implied warranty of merchantability, Cal. Com. Code § 2314; and violation of the Magnusson-  
 13 Moss Warranty Act, 15 U.S.C.A. § 2301. All of the Related Cases allege violations of state  
 14 consumer protection laws, and most allege related state and federal breach of implied warranty  
 15 claims, (including violations of the Magnusson-Moss Warranty Act). All of the Related Cases are  
 16 against the *same, single* defendant, AB. To Moving Plaintiffs’ knowledge, there is no action  
 17 asserting similar claims pending within the Eastern District of Missouri, the location of AB’s  
 18 principal place of business.

### 19 **III. ARGUMENT**

20 This Panel may transfer and consolidate two or more civil cases for coordinated pretrial  
 21 proceedings under 28 U.S.C. § 1407(a) upon a determination that (A) the cases “involv[e] one or  
 22 more common questions of fact,” (B) the transfers would further “the convenience of parties and  
 23 witnesses,” and (C) the transfers “will promote the just and efficient conduct of [the] actions.”  
 24 Consolidation under section 1407 achieves the objectives of “eliminat[ing] duplication in  
 25 discovery, avoid[ing] conflicting rulings and schedules, reduc[ing] litigation cost, and sav[ing] the  
 26  
 27

1 time and effort of the parties, the attorneys, the witnesses, and the courts.” Manual for Complex  
 2 Litigation, (4th Ed. 2004), § 20.131, at 220.

3 **A. The Six Related Cases Involve Common Questions of Fact**

4 “When civil actions involving one or more common questions of fact are pending in  
 5 different districts, such actions may be transferred to any district for coordinated or consolidated  
 6 pretrial proceedings.” 28 U.S.C.A. § 1407(a). Here, each of the six Related Cases addresses the  
 7 same central question of whether AB mislabels its malt beverage products by overstating the  
 8 percentage of alcohol they contain as a matter of uniform corporate policy. Discovery related to  
 9 (1) product labeling, development and marketing, (2) the production methods employed by AB,  
 10 including “statistical process control,” (3) the sophisticated equipment involved in production, as  
 11 well as its accuracy, maintenance and calibration, (4) data establishing AB’s alleged violations,  
 12 (5) AB’s internal policies and directives, and (6) and the extent of damages caused by AB’s  
 13 alleged violations, will necessarily apply to each of these Related Cases. See *In re Plavix*  
 14 *Marketing, Sales Practices and Products Liability Litigation (No. II)*, 2013 WL 565971  
 15 (U.S.Jud.Pan.Mult.Lit.), 2. (“Issues concerning the development, manufacture, regulatory  
 16 approval, labeling, and marketing of the drug are thus common to all actions.”); *In re: Wells*  
 17 *Fargo Wage & Hour Employment Practices Litig. (No. III)*, MDL 2266, 2011 WL 3648270 (Aug.  
 18 19, 2011) (“As in MDL No. 1770, these common factual issues relating to Wells Fargo’s  
 19 classification and compensation policies for HMCs are at the core of the four cases now before the  
 20 Panel. Discovery among these actions regarding defendants’ corporate policies therefore will  
 21 overlap”). The complex and highly-technical nature of these common issues, and the extent of the  
 22 factual and expert discovery that will be involved, weigh heavily in favor of centralization. *In re:*  
 23 *Colgate-Palmolive Softsoap Antibacterial Hand Soap Mktg. & Sales Practices Litig.*, MDL 2320,  
 24 2012 WL 749379 (Mar. 7, 2012).

25 While these six actions implicate different but related state consumer protection statutes, “.  
 26 .. the very nature of multidistrict litigation obliges the presiding MDL judge to ‘routinely apply  
 27

1 the laws of one or more jurisdictions.” *Robinson v. DePuy Orthopaedics, Inc.*, 2012 WL 831650  
 2 (W.D. Va. Mar. 6, 2012), citing *In re Glaceau Vitaminwater Mktg. & Sales Practices Litig.*, 764  
 3 F.Supp.2d 1349, 1351 (J.P.M.L.2011). In addition, there are no other practical alternatives to  
 4 centralization which could accomplish the same goals without resort to Section 1407. See, e.g. *In*  
 5 *re Republic Western Ins. Co. Ins. Coverage Litig.*, 206 F.Supp.2d 1364, 1365 (J.P.M.L.2002).

6 **B. Consolidation Will Further the Convenience of the Parties and the**  
 7 **Witnesses**

8 Plaintiffs in each of the Related Cases allege that AB’s mislabeling stems from uniform  
 9 corporate policies applicable to all of AB’s domestic breweries. Because of the company-wide  
 10 nature of the allegations, the plaintiffs in each of the Related Cases will likely propound similar  
 11 written interrogatories, seek depositions of many of the same individuals and corporate  
 12 representatives, and seek discovery of identical documents. Without pretrial consolidation,  
 13 plaintiffs in the six cases will undoubtedly be required separately to respond to similar or identical  
 14 discovery propounded upon them by AB. They will further be required to retain the same types  
 15 of expert witnesses, all at great expense, to offer opinions and analyses of the same issues.  
 16 Accordingly, consolidation will serve “. . . the convenience of parties and witnesses.” 28 U.S.C. §  
 17 1407(a). See, e.g., *In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.  
 18 .M.L. 1981) (consolidation would “effectuate a significant overall savings of cost and a minimum  
 19 of inconvenience to all concerned with the pretrial activities”); *In re Uranium Indus. Antitrust*  
 20 *Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978) (Plaintiffs “will have to depose many of the same  
 21 witnesses, examine many of the same documents, and make many similar pretrial motions in order  
 22 to prove their ... allegations.”); *In re Sterling Homex Corp. Sec. Litig.*, 405 F. Supp. 314, 315 (J.P.  
 23 .M.L. 1975) (“we are confident that Section 1407 treatment will allow the ... plaintiffs to  
 24 experience a net savings of time, effort and expenses through pooling their resources with other  
 25 plaintiffs”). See also *In re: Morgan Stanley Smith Barney LLC Wage & Hour Employment*  
 26 *Practices Litig.*, MDL 2280, 2011 WL 4889241 (Oct. 12, 2011) (“It is undisputed that discovery  
 27  
 28

1 in all actions will focus on defendants' company-wide compensation policies. . . Accordingly,  
 2 centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including  
 3 with respect to class certification; and conserve the resources of the parties, their counsel, and the  
 4 judiciary.”).

5 **C. Consolidation Will Promote Just and Efficient Conduct of These Actions**

6 Since these Related Cases involve common questions of fact, not only will consolidation  
 7 avoid unnecessary, duplicative and expensive discovery, consolidation will “. . . eliminate the  
 8 possibility of conflicting pretrial rulings.” *In re A.H. Robins Co. "Dalkon Shield" IUD Prods. Dab.*  
 9 *Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975). Consolidation is particularly important here since  
 10 the Related Cases involve overlapping putative classes. For example, Moving Plaintiffs, based on  
 11 information and belief that AB's Missouri brewery distributes malt beverages throughout the  
 12 United States, seek to certify *inter alia* a 48-state class for AB's alleged violation of the Missouri  
 13 Merchandising Practices Act, which applies extraterritorially.<sup>3</sup> This claim will invariably overlap  
 14 with the other Related Cases to the extent that consumers outside of Missouri purchased malt  
 15 beverages manufactured at AB's Missouri brewery. As such, there is a significant risk that  
 16 adjudication by one district court will conflict with an adjudication of the same claims and  
 17 consumers by another district court.

18 Even ignoring the overlap in the proposed classes, since the practices of AB challenged in  
 19 each of the Related Cases are identical, inconsistent rulings on the legality of those practices  
 20 would be a distinct possibility absent consolidation or coordination before a single District Judge.  
 21 This Panel has “. . . consistently held that transfer of actions under Section 1407 is appropriate, *if*  
 22 *not necessary*, where the possibility of inconsistent class determinations exists.” *In re Sugar*  
 23 *Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) (emphasis added). See also *In re*  
 24 *Rio Hair Naturalizer Prods. Liab. Litig.*, 904 F. Supp. 1407, 1408 (J.P.M.L. 1995)

25  
 26 <sup>3</sup> Appendix, Tab A, ¶¶ 18-20.

1 (“Centralization under Section 1407 is necessary in order to ... prevent inconsistent pretrial rulings  
 2 (especially with respect to overlapping class certification requests”); *In re Roadway Express, Inc.*  
 3 *Employment Practices Litig.*, 384 F. Supp. 612, 613 (J.P.M.L. 1974) (“the existence of and the  
 4 need to eliminate [the possibility of inconsistent class determinations] presents a highly persuasive  
 5 reason favoring transfer under Section 1407”); *In re Plumbing Fixture Cases*, 298 F.Supp. 484,  
 6 493 (J.P.M.L. 1968) (transfer necessary to avoid “. . . pretrial chaos in conflicting class action  
 7 determinations”).

8 Further, while there are currently only six Related Cases pending in federal court<sup>4</sup> at this  
 9 time, and a number of others may follow suit, the number of actions pending is not dispositive,  
 10 particularly where the actions raise the types of complex issues involved here. These Related  
 11 Cases will necessarily require significant and highly-technical discovery into AB’s production  
 12 methods, including expert analysis into the manner in which AB’s products are produced, tested,  
 13 labeled, marketed, distributed and sold. These complex issues make consolidation appropriate  
 14 under 28 U.S.C. § 1407.

15 In *In re: Foot Locker, Inc., MDL 2235*, 2011 WL 2118980 (May 26, 2011), the Panel  
 16 centralized just four related cases, noting that “[c]entralization in these circumstances will have  
 17 the benefit of eliminating duplicative discovery; preventing inconsistent pretrial rulings, including  
 18 with respect to class certification; and conserving the resources of the parties, their counsel, and  
 19 the judiciary.” The Panel further noted that “[t]hough a large number of actions are not presently  
 20 before the Panel, also weighing in favor of centralization is that additional related actions alleging  
 21 similar class claims in other states could well be filed.” *Id.* In *In re Gen. Aircraft Corp.*  
 22 *Antitrust/Tort Claims Act Litig.*, 449 F. Supp. 604, 606 (J.P.M.L. 1978), the Panel held that  
 23 “[t]ransfer under Section 1407 is thus necessary, even though only two actions are involved, in  
 24

25  
 26 <sup>4</sup> Moving Plaintiffs are aware of two other state actions in Missouri and Florida.

order to avoid duplication of time-consuming discovery, eliminate the possibility of inconsistent pretrial rulings, and otherwise conserve the efforts of the parties, the witnesses and the judiciary.”

Further, given the widespread publicity this case has garnered,<sup>5</sup> a number of additional actions may be filed, leading to an even greater possibility of multiple, inconsistent rulings.

**D. The Northern District of California is the Most Appropriate Transferee District**

The Northern District of California is the most appropriate transferee district for a number of reasons. First, while each of the Related Cases is in its relative infancy, California is the venue where the first action was filed.<sup>6</sup> See e.g. *In re: Bank of Am. Credit Prot. Mktg. & Sales Practices Litig.*, MDL 2269, 2011 WL 3648279 (Aug. 16, 2011). The California action also will impact the rights of the greatest number of putative class members since Moving Plaintiffs seek to certify a class of consumers from the 48 contiguous states,<sup>7</sup> (as well as a California-only subclass), whereas all of the other actions seek certification of single-state classes.<sup>8</sup> Further, Defendant operates one of only 12 domestic breweries in the Northern District of California, and California is the only state in which Defendant operates multiple breweries,<sup>9</sup> making California home to a significant number of witnesses, and the location of significant volume of documentary evidence. The Northern District of California is home to three international airports, making travel more

<sup>5</sup> See, e.g., Michael Martinez, *Anheuser-Busch Accused Of Watering Down Several Brands*, CNN International, Feb. 28, 2013, <http://www.cnn.com/2013/02/26/business/california-anheuser-busch-lawsuit/>; *Anheuser-Busch Takes Out Full-Page Ads To Fight Claims It's Watering Down Beer*, Reuters, Mar. 3, 2013, [http://www.huffingtonpost.com/2013/03/03/anheuser-busch-ads\\_n\\_2802588.html?utm\\_hp\\_ref=business](http://www.huffingtonpost.com/2013/03/03/anheuser-busch-ads_n_2802588.html?utm_hp_ref=business); Stuart Pfeifer, *Beer Drinkers Accuse Anheuser-Busch Of Watering Down Brews*, Los Angeles Times, Feb. 26, 2013, <http://www.latimes.com/business/money/la-fi-mo-beer-drinkers-sue-anheuserbusch-say-it-watered-down-brews-20130226,0,1472649.story>

<sup>6</sup> See Appendix, Tab A.

<sup>7</sup> Appendix, Tab A, ¶ 20.

<sup>8</sup> See, e.g. Appendix, Tab B, ¶ 17.

<sup>9</sup> See <http://anheuser-busch.com/index.php/our-company/operations/breweries-brewery-tours/>

convenient for out-of-state witnesses and counsel,<sup>10</sup> and at least one of the law firms representing Defendant is located in San Francisco, California.<sup>11</sup> The action pending in the Northern District of California is currently assigned to Judge Edward M. Chen, a jurist who is experienced in multi-district litigation.<sup>12</sup> Lastly, none of the named plaintiffs in the identified actions resides within the Eastern District of Missouri, Defendant's principal place of business.

#### IV. CONCLUSION

For the foregoing reasons, Moving Plaintiffs respectfully request that the Panel order the transfer of the each of the identified Related Cases, as well as all future "tag-along" actions to the Northern District of California for consolidated pretrial proceedings.

Dated: March 22, 2013

Respectfully submitted,  
**THE MILLS LAW FIRM**

By: /s/ Joshua D. Boxer  
Robert W. Mills (SBN 062154)  
Joshua D. Boxer (SBN 226712)  
Corey B. Bennett (SBN 267816)  
880 Las Gallinas Avenue, Suite 2  
San Rafael, California 94903  
Telephone: (415) 455-1326  
Email: Josh@millslawfirm.com

**BRAMSON, PLUTZIK, MAHLER &  
BIRKHAUSER**

By: /s/ Robert M. Bramson  
Robert Bramson, Esq. (Bar No. 102006)  
2125 Oak Grove Rd., Suite 120

<sup>10</sup> See *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 196 F. Supp. 2d 1375 (J.P.M.L. 2002) (finding that "a litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well developed support system for legal services").

<sup>11</sup> See Appendix, Tab A, docket report.

<sup>12</sup> *In Re: Carrier IQ, Inc., Consumer Privacy Litigation*, MDL No. 2330, Transfer Order dated April 16, 2012, at 2; *In re Wells Fargo Home Mortgage Overtime Pay Litigation*, MDL No. 1770; *In re Wells Fargo Loan Processor Overtime Pay Litigation*, MDL No. 1841.



1 Walnut Creek, CA 94598  
2 Telephone: (925) 945-0200  
3 Email: Rbramson@bramsonplutzik.com

4 *Attorneys for Plaintiffs Nina Giampaoli, John Elbert,*  
5 *and the Proposed Classes*  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION  
MDL \_\_\_\_\_ - In Re: Anheuser-Busch Beer Litigation

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
<b>Moving Plaintiffs:</b> Nina Giampaoli, John Elbert <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. California	13-CV-00828-EMC	Hon. Edward M. Chen
<b>Plaintiff:</b> Joel Richardson <b>Defendant:</b> Anheuser-Busch Companies, LLC	D. Colorado	13-CV-00506-CMA-MEH	Hon. Christine M. Arguello
<b>Plaintiffs:</b> Thomas Greenberg, Gerald Greenburg <b>Defendant:</b> Anheuser-Busch Companies, LLC	E.D. Pennsylvania	13-CV-1016-TON	Hon. Thomas N. O'Neill, Jr.
<b>Plaintiff:</b> Brian Wilson <b>Defendant:</b> Anheuser-Busch Companies, LLC	D. New Jersey	13-CV-01122-NLH-AMD	Hon. Noel L. Hillman
<b>Plaintiffs:</b> Joseph Hopkins, Miguel Figueroa, Nicole Mangle <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. Ohio	13-CV-00413-DCN	Hon. Donald C. Nugent
<b>Plaintiff:</b> Michael Seidenstein <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. Texas	13-CV-00917-M	Hon. Barbara M.G. Lynn

**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**MDL \_\_\_\_\_ - In Re: Anheuser-Busch Beer Litigation**

**SCHEDULE OF ACTIONS**

Case Captions	Court	Civil Action No.	Judge
<b>Moving Plaintiffs:</b> Nina Giampaoli, John Elbert <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. California	13-CV-00828-EMC	Hon. Edward M. Chen
<b>Plaintiff:</b> Joel Richardson <b>Defendant:</b> Anheuser-Busch Companies, LLC	D. Colorado	13-CV-00506-CMA-MEH	Hon. Christine M. Arguello
<b>Plaintiffs:</b> Thomas Greenberg, Gerald Greenburg <b>Defendant:</b> Anheuser-Busch Companies, LLC	E.D. Pennsylvania	13-CV-1016-TON	Hon. Thomas N. O'Neill, Jr.
<b>Plaintiff:</b> Brian Wilson <b>Defendant:</b> Anheuser-Busch Companies, LLC	D. New Jersey	13-CV-01122-NLH-AMD	Hon. Noel L. Hillman
<b>Plaintiffs:</b> Joseph Hopkins, Miguel Figueroa, Nicole Mangle <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. Ohio	13-CV-00413-DCN	Hon. Donald C. Nugent
<b>Plaintiff:</b> Michael Seidenstein <b>Defendant:</b> Anheuser-Busch Companies, LLC	N.D. Texas	13-CV-00917-M	Hon. Barbara M.G. Lynn

1  
2  
3 **BEFORE THE**  
4 **UNITED STATES JUDICIAL PANEL ON**  
5 **MULTIDISTRICT LITIGATION**

6 **IN RE: ANHEUSER-BUSCH BEER**  
7 **LITIGATION**

8 **MDL** \_\_\_\_\_

9  
10 **PROOF OF SERVICE**

11 I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this  
12 Certificate of Service was served by First Class Mail on March 22, 2013, to the following:

13  
14 Clerk, Northern District California  
15 San Francisco, CA  
16 450 Golden Gate Avenue  
17 San Francisco, CA 94102-3489

18 Clerk, District of Colorado  
19 Alfred A. Arraj United States Courthouse  
20 Room A-105  
21 901 19th Street  
22 Denver, Colorado 80294-3589

23 Clerk, Eastern District of Pennsylvania  
24 James A. Byrne U.S. Courthouse  
25 601 Market Street,  
26 Philadelphia, PA 19106-1797, Room 2609

27 Clerk, District of New Jersey  
28 Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets Room 1050  
Camden, NJ 08101

Clerk, Northern District Ohio  
Carl B. Stokes United States Court House

PROOF OF SERVICE

1 801 West Superior Avenue, Courtroom 15A  
2 Cleveland, Ohio 44113-1842

3 Clerk, Northern District Texas,  
4 1100 Commerce Street  
5 Room 1572  
6 Dallas, Texas 75242-1003

7 J. Russell Jackson  
8 Skadden, Arps, Slate, Meagher & Flom LLP  
9 4 Times Square  
10 New York, NY 10036  
11 T: 212.735.7839 | F: 917.777.7839 | M: 917.843.4823  
12 *Attorneys for Anheuser-Busch Companies, LLC*

13 Marcus S. Topel  
14 Kasowitz, Benson, Torres & Friedman LLP  
15 101 California Street, Suite 2300  
16 San Francisco, California 94111  
17 514-655-4301 telephone  
18 415-358-4693 facsimile  
19 *Attorneys for Anheuser-Busch Companies, LLC*

20 Joseph M. Cox  
21 Bracewell & Giuliani LLP  
22 1445 Ross Avenue  
23 Suite 3800  
24 Dallas, TX 75202  
25 214/758-1077 telephone  
26 *Attorneys for Anheuser-Busch Companies, LLC*

27 I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this  
28 Certificate of Service was served by Electronic Mail on March 22, 2013, to the following:

29 David S. Senoff  
30 Lauren C. Fantini  
31 Caroselli Beachler Mctiernan & Conboy  
32 1845 Walnut Street, Fifteenth Floor  
33 Philadelphia, PA, 19102  
34 T: (215) 609-1350  
35 F: (215) 609-1351  
36 DSENOFF@CBMCLAW.COM  
37 LFANTINI@CBMCLAW.COM

1  
2 *Attorneys for Plaintiffs Thomas Greenberg and Gerald Greenberg and the Proposed Class (PA);*  
3 *and Plaintiff Brian Wilson and the Proposed Class (NJ)*

4 Ronald Frederick  
5 Ronald Frederick & Associates  
6 1370 Ontario St., Suite 1240  
7 Cleveland, Ohio 44113  
8 (216) 502-1055 (phone)  
9 (216) 566-9400 (fax)  
10 RonF@clevelandconsumerlaw.com

11 *Attorneys for Plaintiffs Joseph Hopkins, Miguel Figueroa and Nicole Mangle and the Proposed*  
12 *Class (OH)*

13 Lackey Hershman, L.L.P.  
14 Roger L. Mandel  
15 Bruce E. Bagelman  
16 3102 Oak Lawn Avenue, Suite 777  
17 Dallas, Texas 75219  
18 P: (214) 560-2201  
19 F: (214) 560-2203  
20 rlm@lhlaw.net

21 *Attorneys for Plaintiff Michael Seidenstein and the Proposed Class (TX)*

22 Dated March 22, 2013

23 /s/ Joshua D. Boxer

24 Robert W. Mills

25 Joshua D. Boxer

26 Corey B. Bennett

27 **THE MILLS LAW FIRM**

28 880 Las Gallinas Avenue, Suite 2

San Rafael, California 94903

Telephone: (415) 455-1326

Email: Josh@millslawfirm.com